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ALL-AMERICA CITY 1949, 1976, 1981

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Magalie Roman Salas
Commission Secretary
Federal Communications Commission
445 - 12th Street SW, TW-A325
Washington, DC 20554

RE: WT Docket No. 99-217/CC Docket No. 96-98

Dear Mr. Salas:

Enclosed please find an original and five copies of comments in the above-referenced matter. Please file-stamp one copy and return it to me in the enclosed self-addressed, stamped envelope.

Thank you.

Sincerely,

Susan A. Low
Assistant City Attorney

SAL:ct
Encs.

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Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WT Docket No. 99-217, CC Docket No. 96-98

Dear Chairman Kennard:

The Notice of inquiry in WT Docket No. 99-217, CC Docket No. 96-98 suggests preemption of local authority over public rights-of-way and/or local tax authority. The City of Des Moines, Iowa strongly opposes any proposal that would preempt local authority.

The City of Des Moines is committed to ensuring quality and competitive telecommunication service for its citizens. It is also legally charged with owning and maintaining its rights-of-way. There is clearly value to the citizens of having excellent and competitive telecommunication service. But while appreciating that value, it is critical to remember that it comes at a great public cost. The costs to the public of telecommunications facilities in the public rights-of-way should not be understated. Those costs go far beyond the initial costs of permitting, inspection and record keeping.

Putting aside initially the reasons against adopting such a suggestion, it is important to reflect upon the fact that there is no basis for adopting such a drastic change on a wholesale basis. Des Moines is the capital of and largest city in Iowa. There are roughly 50 CLECs in Iowa that have applied to provide service with the Iowa Utilities Board, a number of them and a number of wireless companies operating in Des Moines. There are no local policies that place an undue burden upon the growth of telecommunications industry. In fact, one of our most serious problems is managing our right-of-way to accommodate all the telecommunications carriers that have a presence in Des Moines. The City already has competition in the local loop. We expect additional firms to provide residential dial tone in the near future. This hardly supports any claim that the City's right-of-way management is an impediment to competition.



OFFICE OF THE CITY MANAGER
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ALL-AMERICA CITY 1949, 1976, 1981

The City of Des Moines has worked with wireless carriers and citizen groups to identify appropriate locations for wireless antenna towers and in all instances where the telecommunication industry identified a need for a new antenna site, that need has been accommodated. Antennas have been placed in church bell towers, on public water towers, on grain elevators and as necessary to provide coverage to any area identified. The current law has proven adequate to accomplish all lawful objectives of the telecommunication industry. Accordingly, the underlying claims allegedly giving rise to “need” for wholesale usurpation of established local authority are either isolated or illusory.

The telecommunications providers are in a competitive rush to place their facilities to be the first in place. While the speed is to be commended, the “haste makes waste” principle is evident. In one stretch, a telecommunications company within the City “pushed” its fiber cable in a meandering path that literally took up 100% of the 14 feet of right-of-way. The locate showed that the cable followed a weaving path going out beyond the street curb and then snaked in a wide wavy path along the grassy area under the sidewalk and to the point of touching the demarcation between the right-of-way and private property. Its path snaked in that fashion between the limits of the curb and the right-of-way so that it effectively consumed the entire 14 foot width of right-of-way for over 10 city blocks. The FCC might condemn that installation because it obviously means that a single telecommunications company has exhausted the entire right-of-way and a competitor would incur a tremendous cost in having to hand dig to install its facilities. The anti-competitive effect of such poor installation is obviously a concern to the City. But, unlike the FCC, the City must also concern itself with the broader picture. Right-of-way is a precious resource. Acquisition and maintenance of the right-of-way is an ever-escalating expense. The attached photo, reproduced with the permission of the State Historical Society, demonstrates how past telecommunications usage taxed the limitations of the right-of-way and demanded management by local government. The cost burden placed upon the public by the increasing usage by multiple telecommunications interests goes far beyond the cost incurred to maintain the streets torn up repeatedly and record keeping.

The City has experienced substantial increases in costs for public improvement projects because both city workers and hired contractors have been idled for extended periods while previously unidentified and unclaimed fiber optic cables have been found during excavation. Several weeks were lost until the owner was identified and could move the cable. The placement of multiple fiber-optic cable boxes in street intersections increases the cost of construction and repair of sewers and other public improvements. Although but a few inches wide, the meandering path of multiple telecommunication cables and the substantial structures built to house their “hand holes” means that they consume far more of the public right-of-way and hinder the placement and repair of public improvements to a much greater degree than does, for example, a sewer pipe that may be several feet in diameter. It is much more expensive to use small-scale equipment or to hand dig to make a repair rather than to use a shovel or backhoe to repair sewer and water pipes.

Some industry representatives decry local communities' requirements that there be a showing of financial responsibility, etc. before they place their facilities in the right-of-way. These same firms may someday abandon those cables and concrete structures (which may exceed 8 by 8 feet in size) in the right-of-way. The local community will be left with the financial burdens caused by delays when those facilities are found during excavation and the cost of removing them to build or repair public improvements. The local government's need for registration and mapping of telecommunication equipment clearly increases as more facilities-based providers seek entrance into the right-of-way. Break in fiber optic cable can have more dramatic consequences than break in copper wire. When a fiber optic cable is discovered during street work, it is no longer an issue of contacting "the telephone company." As telecommunications companies enter and leave the market, merge and reinvent themselves, the requirement that they make initial showings of responsibility and detail where their facilities are to the local government ultimately responsible for the right-of-way are very modest requirements.

The area between the street curb and the private property line is locally known as the "parking." The City owns and maintains a number of trees along the parking. The City owns these trees and they are a valuable asset of the City. The trees can be mortally damaged by careless excavation in the right-of-way and the City must purchase replacement trees. Also, as telecommunications companies dig in the parking to "push" cable, they frequently fail to properly backfill their excavations. This can cause the street to be undermined by rainwater washing out street subsoil.

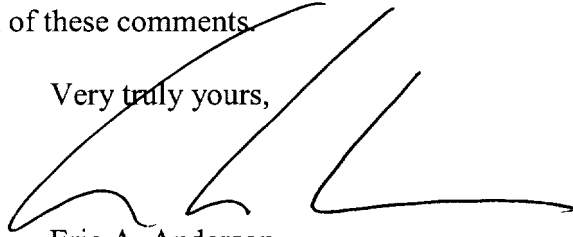
The City must use its resources to defend and investigate lawsuits resulting from telecommunications carriers working in the street. Whether or not those lawsuits are meritorious, the City's resources are taxed by virtue of the telecommunications carriers' use of the right-of-way. It costs the public to have the City's police and fire departments respond to explosions resulting from cable installers "hitting" a gas line.

The right-of-way is used for water service, storm and sanitary sewer. It is used to supply gas and electricity for heat and light. Essential as heat and light are, it is appropriate that the companies that use the public rights-of-way to sell those services at a profit pay franchise fees. When telephone involved a single wire providing citizens access to police, fire, work, family, school and medical care, the FCC did not suggest that it would be appropriate to exempt telephone from responsibility to pay for the privilege of using the right-of-way. It is very costly to acquire, maintain and improve the public right-of-way and the essential road, water, sewer, and public improvements therein. It is ironic now that multiple users have joined the LEC to geometrically burden and increase the costs associated with the right-of-way, the FCC suggests that it would be appropriate to exempt telephone and shift the magnified burden onto the public. The rationale for the timing and shift in the FCC's position is not clear. The solution is not to exempt one class of user because they suggest that it would be difficult to have them pay on a competitively neutral basis. Competitively neutral does not mean "free." It is proper they should pay for the privilege they claim.

The City of Des Moines supports the position articulated by the Comments of National Association of Telecommunication Officers and Advisors "NATOA." And we join NATOA in asking that the inquiry and proposed rulemaking be closed.

Thank you for your consideration of these comments.

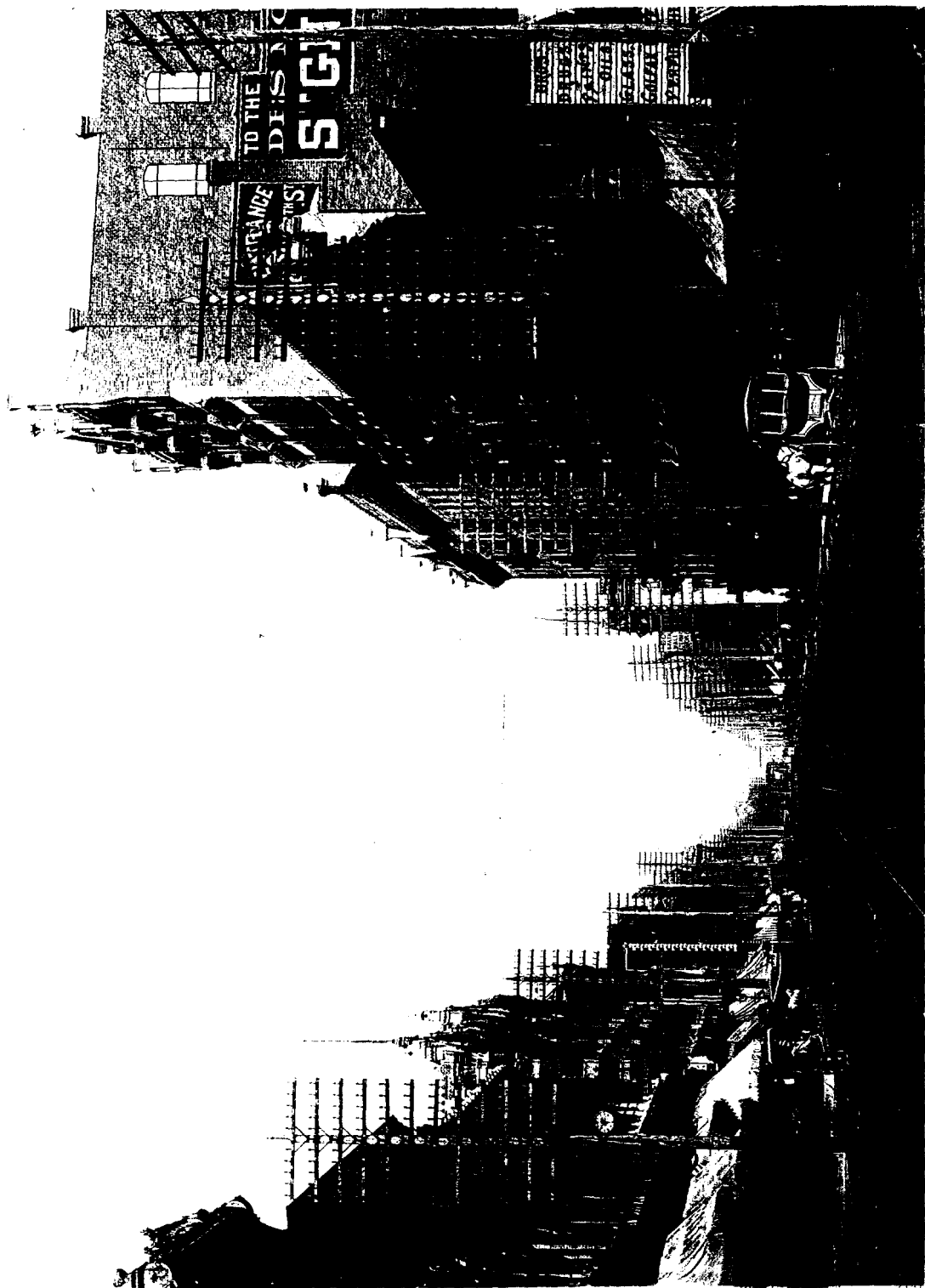
Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by 'A. Anderson'.

Eric A. Anderson
City Manager

Attachment

Cc: Honorable Mayor and Members of the
Des Moines City Council



Walnut Street--East from Fifth.

Photo Courtesy State Historical Society of Iowa - Des Moines